

Only sales to exempt organizations holding an E-number are exempt from sales tax, not sales to individual members of the organization. See 86 Ill. Adm. Code 130.2005. (This is a GIL).

October 11, 2002

Dear Xxxxx:

This letter is in response to your letter dated July 29, 2002 to the Department's Office of Local Government Services. Your letter has been forwarded to our office for a response. We apologize for the delay in responding to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

I represent PERSON, a principal of AAA of CITY, Illinois.

In June of 1998, PERSON, on behalf of AAA, completed an Illinois Business Registration form. She applied for sales tax exemption as a charitable organization.

In September of 1998, PERSON individually entered into a contract with BBB to build a facility which would house, in part, AAA. The building facility was constructed in the years 1998 and 1999.

Thereafter, a dispute arose as to the amount owed under the contract. A lawsuit was filed. In June 2002, a jury adjudicated rights of both PERSON and BBB.

The issue I have for Illinois Department of Revenue is as follows: Would PERSON be entitled to tax exempt status on supplies purchased by BBB in the building of the facility? I enclose a notice she received from the Illinois Department of Revenue on November 5, 1999 confirming her status as a charitable organization and providing her a tax exemption identification number. If BBB were to seek a rebate for sales tax with this number, would it be granted? Your prompt advice would be appreciated as the Circuit Court Judge has given us 30 days to file a response. I look forward to hearing from you.

DEPARTMENT'S RESPONSE:

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

Sales of tangible personal property to a construction contractor who does not incorporate the items into real estate owned by an exempt organization are subject to tax. Items which are purchased tax-free because of their intended incorporation into real estate owned by an exempt organization, but which are not, in fact, incorporated into real estate owned by an exempt organization, are also subject to tax.

As stated above, contractors are generally considered to be the end users of tangible personal property they permanently incorporate into real estate and owe Use Tax upon their purchases. However, contractors who physically incorporate tangible personal property into real estate owned by holders of "E"- numbers can purchase such property tax-free by providing their suppliers with the certification described in Section 130.2075(d), as well as the E- number of the group into whose real estate that property will be incorporated. See enclosed copy of 86 Ill. Adm. Code 130.2075. The suppliers should retain this information in order to document the tax-exempt sale.

On and after July 1, 1987, an entity which would otherwise qualify for tax-exempt status on its purchases of tangible personal property for use or consumption (see the enclosed copies of 86 Ill. Adm. Code 130.2005 and 130.2080) cannot make tax-free purchases unless it has an active exemption identification number issued by the Department. See the enclosed copy of 86 Ill. Adm. Code 130.2007.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). See the enclosed copy of 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E-number, then its purchases are subject to tax. Please be aware that only sales to organizations holding the E-number are exempt, not sales to individual members of the organization. See subsection (k) of Section 130.2005.

A construction contractor may make tax-free purchases of tangible personal property that is to be physically incorporated into real estate owned by exempt entity at any time after the exempt entity is issued a tax exemption identification (E-number) by the Department. Any such purchases made by a construction contractor prior to the date the exempt entity was issued the E-number are considered taxable purchases by that construction contractor unless some other exemption applies.

In your specific case, you state that your client "individually" entered into the contract to construct a facility which would house "in part" the exempt entity. As stated above, only the exempt organization itself may make tax-free purchases, not individual members of the organization. You also stated that a jury adjudicated the right of your client and the builder (not the exempt

organization). We assume from these representations that the exempt entity was not the party who entered into the construction contract and that the real estate was not owned by the exempt entity. This being the case, the construction contractor would not be able to purchase the building materials for the project tax-free. Please note that even if this were not the case, only the purchases of tangible personal property made by the construction contractor on and after November 5, 1999 (when the E-number was issued) could have been purchased tax-free for physical incorporation into real estate owned by the exempt entity (assuming that in this case the exempt organization actually owned the real estate and all of the other requirements of Section 130.2075(d) have been met).

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.